



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2022-0291]

RIN 1625-AA00

Safety Zones; Pensacola, Panama City, and Tallahassee, Florida

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing three temporary safety zones for the reentry of a capsule launched by Space Exploration Technologies Corporation (Space X) in support of the National Aeronautics and Space Administration (NASA) Crew-3 capsule recovery mission. These three temporary safety zones are located within the Coast Guard Sector Mobile area of responsibility offshore of Pensacola, Panama City, and Tallahassee, Florida. The purpose of this rule is to ensure the safety of vessels, mariners, and the navigable waters in the safety zones during a period when reentry is expected. This action is necessary to provide for the safe recovery of this capsule and astronauts in the U.S. Exclusive Economic Zone and implements a special activities provision of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021. This rule prohibits U.S. flagged vessels from entering the safety zones unless authorized by the Captain of the Port Mobile or a designated representative.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until May 15, 2022. For the purposes of enforcement, actual notice will be used from May 1, 2022 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2022-0291 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Andrew Anderson, Sector Mobile Chief of Waterways (spw), U.S. Coast Guard; telephone (251) 441-5940, email Andrew.S.Anderson@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
EEZ	Exclusive Economic Zone
FR	Federal Register
NASA	National Aeronautics and Space Administration
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code
Space X	Space Exploration Technologies Corporation

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest. The National Aeronautics and Space Administration (NASA) Crew-3 capsule recovery mission was approved and scheduled less than 30 days before the need for the three safety zones to be in place starting on May 1, 2022. Publishing an NPRM would be impracticable and contrary to the public interest since the missions would begin before completion of the rulemaking process,

thereby inhibiting the Coast Guard's ability to protect against the hazards associated with the recovery missions.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because the temporary safety zones must be established by May 1, 2022, to mitigate safety concerns during the capsule recovery missions.

III. Legal Authority and Need for Rule

On January 1, 2021, the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116-283) (Authorization Act) was enacted. Its section 8343 (134 Stat. 4710) calls for the Coast Guard to conduct a 2-year pilot program to establish and implement a process to establish safety zones to address special activities in the Exclusive Economic Zone (EEZ).¹ These special activities include space activities carried out by United States citizens. Terms used to describe space activities, including *reentry site*, and *reentry vehicle*, are defined in 51 U.S.C. § 50902.

The Captain of the Port Mobile has determined that potential hazards associated with the NASA Crew-3 capsule recovery mission presents a safety concern for anyone within the perimeter of the three safety zones. The safety zones will only be activated when a reentry vehicle is approaching a reentry site and will be deactivated once the reentry vehicle is removed from the reentry site. The purpose of this rule is to ensure the safety of astronauts, vessels, mariners, and the navigable waters in the safety zones before, during, and after the scheduled event. The Coast Guard is issuing this rule under authority of section 8343 of the Authorization Act and 46 U.S.C. 70034.

IV. Discussion of the Rule

¹ The Coast Guard defines the Exclusive Economic Zone in 33 CFR 2.30.

The Coast Guard is establishing special activity temporary safety zones for reentry vehicles within any of the three reentry sites described in this rule. The Crew-3 recovery mission may occur within any of the following reentry sites in the Gulf of Mexico: Pensacola, Panama City, and Tallahassee, Florida.

Approximately one day before capsule reentry and recovery, Space X and NASA will determine which of the sites will be used. This determination is based on mission and environmental factors. After the determination is made, the respective COTP will use Local Notice to Mariners and Broadcast Notice to Mariners on VHF-FM channel 16 to inform the public of which safety zone is expected to be used.

The three temporary reentry sites in the EEZ are listed below and include all waters within the coordinates from surface to bottom. The coordinates are based on the projected reentry locations as determined from telemetry data and modeling by Space X.

(1) Pensacola site:

Point 1	29.930° N	-087.643° W
Point 2	29.930° N	-087.357° W
Point 3	29.670° N	-087.357° W
Point 4	29.670° N	-087.° W

(2) Panama City site:

Point 1	29.846° N	-086.326° W
Point 2	29.846° N	-086.040° W
Point 3	29.586° N	-086.040° W
Point 4	29.586° N	-086.326° W

(3) Tallahassee site:

Point 1	29.413° N	-084.342° W
Point 2	29.413° N	-084.058° W
Point 3	29.153° N	-084.058° W
Point 4	29.153° N	-084.342° W

When the reentry site is activated as a safety zone, the COTP or a designated representative will be able to restrict vessel movement including but not limited to transiting, anchoring, or mooring within the safety zone to protect vessels from hazards associated with rocket and capsule recovery missions. Active restrictions are based on mission specific recovery exclusion areas provided by Space X and NASA, are temporary in nature, and would only be enacted and enforced at a reasonable time prior to and after a recovery. Because the safety zones are located in the EEZ, only United States flagged vessels are subject to safety zone enforcement. Other vessels are encouraged to remain outside the safety zone.

The COTP will inform the public of the activation or status of the safety zones by Local Notice to Mariners and Broadcast Notice to Mariners on VHF-FM channel 16.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, duration, and scope of

the safety zones. The safety zones are limited in size and location to only those areas where capsule re-entry is reasonably occurs. The safety zones are limited in scope, as vessel traffic will be able to safely transit around the safety zones which will impact a small part of the United States exclusive economic zone (EEZ) within the Gulf of Mexico.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

The safety zone activation and thus restriction to the public is expected to be approximately two hours per capsule recovery, and we anticipate one splash down during the effective period of this rule. Vessels would be able to transit around the activated safety zone location during this recovery. We do not anticipate any significant economic impact resulting from activation of the safety zones.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s

responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishing of three temporary safety zones, one of which may be activated on one occasion for approximately two hours between May 1, 2022 and May 15, 2022 for a Space X and NASA mission. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

2. Add § 165.T07-0233 to read as follows:

§ 165.T08-0291 Safety Zones; Pensacola, Panama City, and Tallahassee, Florida.

(a) *Location.* The following areas are safety zones:

(1) *Pensacola site.* All waters from surface to bottom encompassed within the following coordinates connecting a line from Point 1, thence to Point 2, and thence to Point 3, connecting back to Point 4:

Point 1	29.930° N	-087.643° W
Point 2	29.930° N	-087.357° W
Point 3	29.670° N	-087.357° W
Point 4	29.670° N	-087.643° W

(2) *Panama City site.* All waters from surface to bottom encompassed within the following coordinates connecting a line from Point 1, thence to Point 2, and thence to Point 3, connecting back to Point 4:

Point 1	29.846° N	-086.326° W
Point 2	29.846° N	-086.040° W
Point 3	29.586° N	-086.040° W
Point 4	29.586° N	-086.326° W

(3) *Tallahassee site.* All waters from surface to bottom encompassed within the following coordinates connecting a line from Point 1, thence to Point 2, and thence to Point 3, connecting back to Point 4:

Point 1	29.413° N	-084.342° W
Point 2	29.413° N	-084.058° W

Point 3	29.153° N	-084.058° W
Point 4	29.153° N	-084.342° W

(b) *Definitions.* As used in this section --

Designated representative means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers and other officers designated by or assisting the COTP Mobile in the enforcement of the safety zones.

Reentry Vehicle means a vehicle designed to return from Earth orbit or outer space to Earth, or a reusable launch vehicle designed to return from Earth orbit or outer space to Earth, substantially intact

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) The COTP Mobile or other designated representative may restrict vessel movement including but not limited to transiting, anchoring, or mooring within these safety zones to protect vessels from hazards associated with rocket recoveries. These restrictions are temporary in nature and will only be enacted and enforced prior to and just after the recovery missions.

(3) Because the safety zones are within the United States Exclusive Economic Zone, only United States flagged vessels are subject to safety zone enforcement. Other vessels are encouraged to remain outside the safety zone.

(d) *Enforcement periods.* This rule will be enforced between May 1, 2022 and May 15, 2022, beginning a reasonable time before splashdown of a reentry vehicle in one of the areas described above, and will be deactivated once the area is no longer hazardous. The COTP will inform the public of which safety zone will be activated by Broadcast Notice to Mariners on VHF-FM channel 16.

Dated: April 29, 2022

LaDonn A. Allen, Captain

Commander, Coast Guard Sector Mobile

Captain of the Port Mobile

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